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Chapter XX

RELIGIOUS AND CHARITABLE ENDOWMENTS

I
INTRODUCTORY

"Let him without tiring always offer sacrifices (istha) and perform works of charity (purta) with faith, for offering and charitable works made with faith and with lawfully earned money procure endless rewards. Let him always practise according to his ability with a cheerful heart, the duty of liberality (danadharma) *both by sacrifice* (istha) *and charitable works* (purta) *if he finds a worth recipient for his gifts."*
—Manu Smriti, IV, 216-17.

There is very little textual authority on the religious and charitable endowments; these are not included in one of the eighteen titles of law. The provisions are found scattered here and there and the matter is dealt with not directly, but incidentally. However, all along the history of Hindus, great emphasis has been placed on *dana* for religious and charitable purposes and this has helped our courts to develop the law of religious and charitable endowments. The modern Hindu law of religious and charitable endowments is essentially a judge-made law, and our courts are still busy in their endeavour to develop and interpret the law of endowments in our modern context. The legislation too, has its own share though only at the regional level,[1] the law has not been codified, though we have a detailed report of the Hindu Religious Endowment Commission. The state legislations have tried to tackle the problem, but it has been able to tackle it only on the fringes. In this state of affairs there has always been a great temptation to draw freely from the English law of charitable trusts. It is submitted that this is a pitfall which must be avoided. If we would try to understand the Hindu endowment on the analogy of English trusts, we are bound to falter. This is so, for the simple reason that the endowments are not trusts. The Hindu notions of what are charitable and religious objects also differ fundamentally from English notions.

Historical

It is certain that temples and *Maths* (also spelled as Mutts) did not exist in

1. The State statutes are : the Bihar Hindu Religious Trust Act, 1950; the Madras High Religious and Charitable Endowment Act, 1959; The Puri Shri Jagannath Temple (Administration) Act, 1952; the Bombay Public Trust Act, 1950; the Madhya Pradesh Public Trust Act, 1951; the Orissa Hindu Religious Endowments Act, 1951; the Travancore-Cochin Hindu Religious Institutions Act, 1970; The Rajasthan Public Trust Act, 1959; the Uttar Pradesh Hindu Public Religious Institutions (Prevention of Dissipation of Properties, Temporary Powers) Act, 1962; the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966.

the *Vedic* period. In the *Sutra* period also, *Maths* did not exist, though it seems that temples in some form existed. *Gautama-Dharmasutra* mentions a temple of God at more than one place, but we do not know what type of temple it was and what were the deities that Hindus worshipped there.

It is not easy to say when exactly idol worship came into existence. It is certain that it did not exist in the *Vedic* period. The Hindus have been worshipping *Pouranic* gods. The age of the *Pourannas* is uncertain.[1] Between 4th century and 8th century A.D., the worship of the *Pouranic* gods became very popular. The Gupta Emperors were the patrons of the *Pouranic* faith. The idea of trinity of Gods—Brahma as God of creation, Vishnu as God of preservation, and Siva, as the God of destruction is a *Pouranic* concept. However, the *Pouranas* make it clear that these Gods, though three in form, really constitute one entity. The deities that Hindus mostly worship are *Vishnu, Durga* (in their various manifestation and forms, such as Rama and Krishna of the former, *Kali, Durga, Chandi, Bhairwi,* of the latter), *Shiva, Ganesh* and *Surya*. They constitute the *Panchu Devatas* of Hindus. Hindus do not worship the image, but the Supreme Being; the idol is but an image of that Supreme Being.The images do not represent separate gods or goddesses, but each is a symbol of the same universal principle the Supreme God. This is made clear by the following verse : "It is for the benefit of the worshipper that there is conception of images of Supreme Being which is bodiless, has no attribute, which consists of pure spirit and has got no second."[2]

With the emergence of idol worship, there came into existence dedication of property for the construction and maintenance of temples and consecration of idols.

The institution of *Math* was unknown to the Vedic Aryans. The *Vedic Grihya Sutras* did not approve of asceticism even at the last stage of life, as they did not countenance any doctrine of negation of life. Every Hindu was required to pass his life through four *ashrams* (*See* Chapter II, under the title *Ashrama Dharma*). Even the life of *akhanda brahmacharya* was sanctioned in exceptional cases. It was in the last stage of life, *viz.*, in the *sanyasa ashrama* that a life of contemplative ascetic was sanctioned. Such a life was the life of a wandering *sanyasi*, who lived on whatever was offered to him by the people. He mostly lived on herbs and roots. In such an organization of life and society, the monastic institutions were out of question.

With the revival of Hinduism between 4th century and 8th century A.D., there came into existence the institution of *Math*. In India, the institution of *Math* is essentially a contribution of Buddhism. In the eighth century A.D. was born the great Sankaracharya who established *Maths* at the four extremities of India.[3] Once the institution of *Math* came into existence, it was followed up by other great leaders. After the great Sankaracharya, the name of Ramanuja holds a

1. The *Pouranas* are said to be eighteen in number and are attributed to sage Vyasa. Most of them seem to be of the post-Buddhistic compilations. The *Puranas* are a class of Hindu epic literature. They deal with various matters such as exploits of gods, sages and kings how various Avatars of Vishnu came, of rites of worshipping gods and goddesses by prayer, fasting, votive offerings, pilgrimage, etc. of genealogies and cosmogony.
2. Quoted by Raghunandan.
3. The Jyotir *Math* Badrinath *Math* in the north; the Sarda *Math* in Gujarat, the Sringeri *Math* in South; and the Gobardhan *Math* at Puri in East.

place of pride in the development and spread of the institution of *Math*. Sankaracharya propounded a theory of pure monism, but Ramanuja propounded the philosophy of qualified monism.[1] The followers of Ramanuja are known as Sri Vaishnubas. After the death of Ramanuja, several sects and sub-sects of Vaishnavas came into existence, Shankara and his followers were not in favour of ascetic life for *Sudras*, but in course of time, *Sudra Maths* came into existence.

With the coming into existence of *Maths*, properties began to be dedicated to *Maths*. From earliest times Hindus have been dedicating property for religious and charitable purposes. This has been mainly under two heads : *Istha* and *Purta*. The former indicates the Vedic sacrifices and rites and gifts associated with such sacrifices. The latter stands for all other religious and charitable acts and purposes unconnected with the *Vedic* sacrifices. The *Istha-Purta* have been considered as means for going to heaven. The *Istha* works as enumerated by Pandit Pran Nath Saraswati in his work on Endowments, are : (a) *Vedic* sacrifices, (b) gift offered to priests at the *Vedic* sacrifice, (c) preserving the *Vedas*, (d) religious austerity, (e) rectitude, (f) *Vaiswadeva* sacrifices, and (g) hospitality. The *Purta* works signify works of public utility, such as tanks, wells, groves, the gifts of food, *dharmashalas*, schools, asylums, places for supplying drinking water, relief for sick, gifts for the promotion of education and knowledge, temples and processions of deities, etc. According to Pandit Pran Nath Saraswati, they are : (i) gifts offered outside the sacrificial grounds, (ii) gifts on occasions of an eclipse, solstice and other special occasions, (iii) construction of works for the storage of water, as tanks, wells, *babaries*, (iv) construction of temples for gods, (v) establishment of procession in honour of the gods, (vi) gift of food, and (vii) relief to the sick. It is obvious that the list is not exhaustive. It is evident that no clear cut distinction was made between religious and charitable acts. Hospitality was an *Istha* work and the construction of temples was a *Purta* work. Mukherjea says that sole distinction between the two lies in the fact that the former relates to the *Vedic* sacrifices, while the latter does not. The learned author observed : "The position, therefore, is that in Hindu system, religion and charity overlap each other and do not admit of any differentiation. They are both integral to *Dharma* or the rule of righteousness which the Hindu sages regard as the upholder of the entire fabric of the universe, both in its physical and moral aspects.[2]

It is submitted that the philosophy that Hindus propounded the social structure that they founded and the concept of law that they enunciated did not leave any scope for such distinction that we make today, between religious objects and charitable objects. All objects of *dana* enumerated by sages were meritorious, as all *dana* led to heaven. In that context, any distinction between the religious charity and the charity proper was wholly unfounded.

1. Ramanuja and other Vaishnaba teachers who followed him were all philosophical atheists. Their endeavour was to reconcile the metaphysical doctrines with the demand of human heart which always required a personal god as the supreme cause to all that exists and an external soul which yearns for an approach to and union with the Being. According to Ramanuja, the Supreme Being together with individual soul and the material world constitute one integral whole and neither the individual soul nor the external world though dependent on God are devoid of reality. *See* Mukherjea *Hindu Law of Religious Charitable Trusts*, 265.
2. *Hindu Law of Religious Charitable Trusts* (3rd Ed.) 10-11.

Various types of gifts were emphasised.[1] But, merely by making gifts or performing sacrifices, a charitable or religious endowment does not come into existence. An endowment will come into existence only when some property or fund is dedicated for a religious or charitable purpose or object.

II
Essentials of a Valid Endowment

The essentials of a valid endowment : (1) the dedication must be complete, (2) the subject-matter must be specific, (3) the object must be definite,[2] and (4) the settler must have capacity to make the endowment.

Dedication

Dedication of property is essential for the creation of an endowment. A dedication consists of the following two elements : (1) *Sankalpa* or formula of resolve, or an intention to dedicate properties, and (2) *utsarga*, or renunciation.

The ceremonies of dedication begin with the *sankalpa*, i.e., the intention to dedicate, manifested by performing certain ceremonies, which include the recitation of time, date, year of dedication, and of the object the founder has in his mind. The *utsarga* completes the gift. It implies renunciation of the ownership by the giver in the thing given. There are different formulas or ceremonies and rites for different types of dedications. The main formula has been : "May the gods, the ancestors and the rest be satisfied."[3]

According to Kamlakara, gift can be made by the usual libation of water, but if there is no particular recipient, such as when a *Math* is to be used by ascetic in general and not by the head of any particular sect or class, the offering of water is thrown into a pot. According to the *Kalka Purana*, all *Maths* are required to be dedicated to *Shankara*.

For the consecration of a temple and installation of a deity, the *smritikars* have prescribed elaborate rituals. In the case of temples and idols, the *sankalpa* may be of two types : if the founder has any particular object, for the accomplishment of that object; and the other is for the love of God. The distinction between dedication to deity and temple and to other objects is this that in the former case, the deity is the recipient of the gift, while in the latter there may not be any specific person who is the recipient of the gift. Thus, in case of dedication to a temple, the ceremonies of *sankalpa* and *utsarga* mean that the ownership in the properties and funds is divested from the founder and is invested in the deity. In *Deoki Nandan* v. *Murlidhar*,[4] the Supreme Court observed : "the ceremonies relating to dedication are *sankalpa*, *utsarga* and *prathista*. *Sankalpa* means determination, and is really a formal declaration by the settler of his intention to dedicate the property. *Utsarga* is formal renunciation by the founder, of his ownership in the property, the result whereof being that it becomes impressed with trust for which he dedicates it." If *utsarga* is proved to have been performed, the dedication must be held to have been to the public.

1. Devala classified them under four heads : *Dhurba* or eternal gifts such as construction of wells, tanks (storage and supply of water) *Dharmshalas* or rest-houses etc; *Ajasrika* or daily charities; *Kamya* gifts made with a particular object and *Naimitaika* occasional gifts made on auspicious occasions.
2. *See Bhagubutty* v. *Goorooprasana*, 25 Cal. 112.
3. The words and the 'rest' were added later on.
4. 1957 S.C. 133 at 140.

Utsarga has to be performed only for charitable endowments, like construction of tanks, rearing of groves or gardens and the like, and not for religious foundations; *prathista* takes the place of *utsarga* in dedication to temples. Where *prathista*, i.e., formal installation of the deity, is proved, the dedication is completed and valid, notwithstanding that *utsarga* has not been performed. In *Shahazad Kunwar* v. *Raja Ram Karan*,[1] the owner constructed a temple, installed a deity and made gift of property, but there was no formal dedication. It was held that by making the gift and by his conduct the founder made the property *devottar*.

The *sankalpa*, in the dedication of tanks, groves, gardens and trees, is different, since there is no particular recipient of the gift. The formula for the dedication of a tank, according to the *Utsarga Mayukha*, is :""I have given the water to all being in common, may all being enjoy bathing, drinking and swimming." The formula for dedication of other things of this nature like *dharmasalas*, hospitals and schools is more or less the same. In all such cases, the dedication is for the benefit of the public in general, or to a section of public. There is no specific donee who may accept the gift.

Although while dedicating properties to a *Math*, idol or to a charitable or religious object, a Hindu performs the ceremonies of *sankalpa*, *utsarga* and *samarpana*, the performance of these ceremonies is not essential for the creation of an endowment. What is essential is that there must be a clear intention to dedicate the properties for the object.[2] *Sankalpa* and *samarpana* are manifestations of that intention. Intention may be manifested otherwise also.[3] This also implies that mere performance of ceremonies may not be conclusive evidence of dedication if it is established that there was no real intention to create an endowment, that it is merely a colourable transaction to give benefit to the founder and his descendants, in such a case it will not be a valid endowment.[4] The dedication of property is a secular act. The only difference between a secular gift and a gift for an endowment is that in the former case formalities of the gift laid down in the Transfer of Property Act have to be performed, while in the latter case, no acceptance of gift or performance of other formalities of gift are required, the renunciation of ownership by the founder is enough.[5]

Thus, in the modern Hindu law, it is not necessary that performance of any particular ceremony should be established, before endowment could become valid and binding. The dedication is complete as soon as it is established that the founder intended to make a gift in favour of a charity and that he had divested himself of the ownership of the property, the subject-matter of the endowment. Actual installation of deity in the temple is not necessary for the completion of the gift,[6] till the temple is constructed and the deity is installed, the property remains vested in the trustees. In Hindu law, for the creation of a valid endowment no trust need be created. Even in the absence of a ceremony

1. 1965 S.C. 254.
2. *Prem Nath* v. *Hariram*, 16 Lah. 85; *Deosaran* v. *Deoki*, 3 Pat. 842.
3. *Murlimanohar* v. *Gopilal*, 1971 Raj. 177 (some earlier authorities have been reviewed); *Shri Krishna* v. *Mathura*, (1972) A.L.J. 155.
4. *Watson* v. *Ramchand*, 18 Cal. 10 (F.B.); *Thakurjee* v. *Sukhdeo*, 42 All. 395 (F.B.).
5. *Ram Swaroop* v. *Thakar*, 1936 Nag. 35.
6. *S.N. Pachumathu* v. *Tillaiadi Temple*, 1971 Mad. 253 where earlier authorities have been reviewed.

such as *sankalpa* or *samarpana*, or deed, dedication may be established by other evidence.[1]

A verbal dedication of properties is enough; no writing is necessary to create an endowment.[2] Dedication to charity need not necessarily be by instrument or grant. It can be established by cogent and satisfactory evidence of conduct of the parties and user of property which show extinction of private secular character of the property and its complete dedication to charity.[3] If an endowment is created by a will, will has to be in writing and attested by two witnesses.[4] A dedication of land for a public temple is not a gift requiring a registered deed. But if property is transferred by way of gift to trustees of a temple, it is a transfer of property and, if it is of immovable property worth Rs. 100 or more, registration will be necessary.

Dedication may be absolute or partial.—A dedication for an endowment may be absolute or partial. It is an absolute dedication when the donor divests himself of all beneficial interests in the property dedicated to the endowment. The dedication is partial when only a charge for an endowment is created on the property.[5] For instance, the donor may lay down that certain portion of income is to be applied, for an endowment. In such a case the property will devolve in an ordinary way, subject to the charge in favour of the endowment.[6] The same will be true when the owner grants an easement on his property for an endowment. Whether a *debutter* is partial or absolute depends upon the intention of the settler. In ascertaining the intention, regard must be had to the deed as a whole and the terms used therein.[7] Grant of right of residence to the *shebait* in the temple,[8] or grant of a small portion of income for his maintenance[9] or a direction for accumulation in the deed,[10] will not render the endowment as partial.

An endowment is not invalid merely because it is to take effect after the determination of a life estate. Thus, where under a deed a person reserves a life estate for himself and directs that after his death, income of his property be paid to his daughter and on the death of the daughter, the income should go to a temple, it was held that the dedication was valid.[11]

A bequest to an endowment is not invalid for transgressing the rule against perpetuity.[12]

Once a valid dedication is created, the founder has no right to revoke it.[13]

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1. *Vidhyavaruthi* v. *Balusami*, (1921) 48 I.A. 302.
2. *Shri Krishna* v. *Mathura*, 1972 A.L.J. 155; *Sunderlal* v. *Jogeswar*, 1975 Pat. 246 (intention was not clear).
3. *Dasratha* v. *Subbarao*, 1957 S.C.R. 1122; *See* also *Gooindalaji* v. *State of Raj.*, 1963 S.C. 1638.
4. Indian Succession Act, 1925, S. 57.
5. *Dasratha* v. *Subba Rao*, 1957 S.C. 797; *S.S. Pillai* v. *K.S. Pillai*, 1972 S.C. 2069; *Sammani* v. *Sethusubramania*, (1975) 1 S.C.J. 246; *Gaur* v. *Thakur*, 1927 J. & K. 53.
6. *Nirmala* v. *Balai*, 1965 S.C. 1874.
7. *Dasratha* v. *Subba Rao*, 1957 S.C.R. 1122; *Sappani* v. *Pillai*, 1974 S.C. 407.
8. *Shree* v. *Sushila*, 1954 S.C.R. 407.
9. *Dasratha* v. *Subba Rao*, cited earlier.
10. *Sarojini* v. *Jynendra*, 24 C.L.J. 241.
11. *Govind* v. *Vomati*, 30 All. 288.
12. *Jugat Sundary* v. *Manak*, (1857) 1 Boulnois 266.
13. *Dasami* v. *Param*, 51 All. 621; *Sivakanta* v. *Rajaram*, 1950 Gau. 154.

Subject-matter must be specific

The second essential of a valid endowment is the property dedicated must be specific. The words of gift used by the testator must be unambiguous and that the subject of the gift must be well defined and certain.[1] Any uncertainty about the subject-matter of the dedication will be fatal to the creation of an endowment. Thus, where the testator gave direction in the will that the money should be spent for a certain charity, but did not specify the amount, it was held that no valid endowment came into existence. On the other hand, if the scope and object of the endowment is well defined and it is stated that out of certain property such sum should be spent as would be necessary, the dedication is valid. In *Jamnabai* v. *Khimji*,[2] a will of a Hindu contained, *inter alia*, the following two clauses : "In my country at the village Shri Anajar, I am at present carrying on *sadavart*. Similarly, out of my funds my trustees are to continue the same. After my death my trustees shall, out of the income, set up a *sadavart* at the town of Nasik." No specific amount was specified or set apart for the second *sadavart*. The second *sadavart* was held valid. The court said the intention of the testator to set up a *sadavart* at Nasik on the line at Shri Anjar was clear and definite. It was not at all difficult to ascertain the nature of *sadavart* at Nasik. Similarly, in *Gokul* v. *Issurlochan*,[3] a testator directed to his executors to get "a *Shiva's* temple constructed at a reasonable cost in a suitable place within the compound of brick-built *battakhana* house". Although no specific amount was mentioned, the court held that the direction was valid and held that a sum amounting to 30 per cent of the movable estate of the testator should be spent for the construction of the *Shiva's* temple.

Mukherjea rightly says that our courts in giving effect to the religious and charitable trust in India are not fettered in any way by the technical rules of construction adopted by Chancery Court in England. However, in deciding cases, our courts have not infrequently drawn upon the English precedents and the result has been that "some amount of artificiality has been introduced into the matter, which cannot be said to be altogether desirable.[4] This is equally true about the other essentials of a valid endowment.

Object must be definite

It seems that all those purposes which are charitable under English law will also be charitable under Hindu law. But under the head, "advancement of education", there may be objects which are valid under Hindu law though not valid under English law. Thus, the dedication of property for, what English law calls "superstitious use," is not applicable in India and such purposes are valid objects under Hindu law. As Mayne rightly puts it : "what are purely religious purposes and what religious purposes will be charitable, must, of course, be entirely decided according to Hindu law and Hindu notions."[5] In *Monorama* v. *Kalicharan*,[6] a testator directed his executors, *inter alia*, to set apart a sum not exceeding Rs. 25,000 for distribution "among his poor relations, dependants and

1. *Mussory Bank* v. *Raynor*, 91 I.A. 70.
2. 14 Bom. 1.
3. 14 Cal. 233.
4. *Hindu Law of Religious and Charitable Trusts*, 88.
5. *Hindu law and Usage*, 912.
6. 31 Cal. 166.

servants." As to who would be entitled to the benefit was left to the discretion of the executor. The court held the bequest to be valid. In *Gordhan* v. *Chunilal*,[1] the recital was that the testator has established a *Dharmashala* at Benares for charitable purposes and carried on charity at a cost of Rs. 50 p. m. For the purpose of making permanent arrangements for this charity, the testator set apart the income of seven villages for the expenses of the *Dharmashala* and also directed that an amount of Rs. 500 p.m. should be applied for 'pun' at the *Dharmashala*. He did not specify what type of *pun* was to be done. The bequest was held valid. The Court said : "The dedication is for charitable purpose (*pun*) and for charitable purpose alone. A trust for such purpose, that is, for charity generally, will always be carried out notwithstanding that the object of the charity are not specifically described."

Samadhi.—In some decisions,[2] the Madras High Court had laid down that the building of a *samadhi* over the remains of a person and the making of provision for the purpose of *gurupooja* and other ceremonies in connection with the same cannot be recognized as charitable and religious purpose under Hindu law. This view was confirmed by the Supreme Court in *Saraswathi Ammal* v. *Rajagopal*.[3] These decisions lay down that the *samadhi* of an ordinary person cannot be an object of a Hindu charitable or religious endowment.[4] There is another line of cases which lay down that the *samadhi* of a saint may, in course of time, become a shrine or a temple by reason of long public worship, then an endowment for such a *samadhi* will be valid. Thus, in *Ratnavelu* v. *Commr. for H.R.& C.E.*,[5] the court held that an institution which had its origin in a *samadhi* and still retains that character will be a valid endowment if for a considerable time it has been regarded as a place of religious worship and the public is entitled to access to the *samadhi* as a matter of right.[6] An endowment by a son for the installation of his father's statue will be valid only if the father is held in high public esteem.[7] In *Nagu* v. *Banu*,[8] the Supreme Court observed that the prohibition against an endowment for a *samadhi* will not apply when an ancestor is cremated and a memorial is raised for performing *shradha* ceremonies and conducting periodical worship "for this practice may not offend the Hindu sentiment which does not ordinarily recognize entombing the remain of a dead."

Gift for dharma.—In a series of cases, a question has come before our courts whether a gift or bequest for *dharma* without specifying the object is valid. The Bombay High Court had held it to be void for uncertainty.[9] The early Bombay decisions were based on the artificial rules of construction of English law of trust. In the later decisions this view was carried forward on the basis of the

1. 30 All. 111.
2. *Kunhamutty* v. *Thondikkodan*, 1935 Mad. 29; *Draivisundaram* v. *N. Subramania*, 1945 Mad. 217; *Veluswami* v. *Dandapani*, 1946 Mad. 485; *Malayalam* v. *Malayalam* (1974) 2 M.L.J. 126.
3. 1953 S.C. 491.
4. The Madras High Court has followed this view in *Ramanasraman* v. *Commr, H.R.&C.E.*, 1961 Mad. 271; *R.K. Karuppanam* v. *Triumalia*, 1962 Mad. 500.
5. 1954 Mad. 398.
6. *See* also *Ramaswami* v. *Commr. H.R. & C.E.*, 1951 Mad. 473.
7. *Gounder* v. *Rajan*, 1976 Mad. 102.
8. 1978 S.C. 1174.
9. *See Vundraban* v. *Cursondas*, 21 Bom. 646 where the matter has been elaborately discussed; this case went upto the Privy Council and the Privy Council affirmed the judgment of the High Court; *Runchoddas* v. *Vundraban*, 26 I.A. 71.

stare decisis. In *Vundraban* v. *Cursondas*,[1] Farran, C.J. and Tayabji, J. were of the view that the term 'dharma' was not incapable of precise meaning but they felt bound by the precedents. In *Parthasharth* v. *Thiruvengada*,[2] Subrammania Ayyar, J., in the course of his judgment, singular for erudite learning, observed that 'dharma' when used in conncetion with gift of property by a Hindu, has perfectly settled meaning and connotes *Istha* and *Purta* donations. Similar views were expressed by Mookerjee, J. of the Calcutta High Court.[3] But the Privy Council was not willing to reconsider the question,[4] and, therefore, purely on the basis of the *stare decisis*, the present legal position is that a gift for *dharma* is not valid. In *Vaidhya* v. *Swami Nath*,[5] the Privy Council held that if an existing charity is indicated by the word "dharma", the gift is valid. It may be hoped that when the occasion will arise, the Supreme Court will examine the entire matter *de novo*.

Settler must have capacity to settle the endowment

The fourth requirement for the validity of an endowment is that the settler must be of sound mind and a major, and he should not suffer from any legal disqualification. Apart from disabilities under some special statutes,[6] we may mention two cases of disability under Hindu law : (a) the coparcener's disability in respect of his interest in the coparcenary property, and (b) the woman's disability in respect of a woman's estate.

Under the Dayabhaga school, the father has absolute power over all properties, self-acquired or inherited. Similarly, a Dayabhaga coparcener has a specified interest in the coparcenary properties. Thus, a father or a coparcener under the Dayabhaga school has full power of creating endowments : the father can create an endowment of all properties and the coparcener of his share in the coparcenary property. The position is entirely different under the Mitakshara school, where the *karta* or any other Mitakshara coparcener has no power of making gift or otherwise alienating joint family property save with the consent of other coparceners. In Madras, Bombay and Madhya Pradesh, a coparcener can alienate his undivided interest. But since he can do so only for value, he has no power of creating an endowment of his interest in the joint family property.

Mitakshara *karta* has power of alienating coparcenary property in certain exceptional cases (*See* Chapter XII, Part II). One of them is in the performance of religious duties. The performance of religious duty includes gifts for pious and charitable purposes. Can a *karta*, in exercise of this power, create an endowment? The early judicial decisions in this regard were not uniform. But the position under the modern Hindu law seems to be clear. The *karta* can make a gift inter vivos of small portions of joint family property for pious, religious and charitable objects, but such gifts cannot be made by will.[7] In *Raghunath* v.

1. 21 Bom. 646.
2. 30 Mad. 340.
3. *Bhupati* v. *Ramlal*, 37 Cal. 128 (F.B.).
4. In *Runchoddas* v. *Vundraban*, 26 I.A. 71 : the Privy Council took the view that a dedication for *dharma* is invalid.
5. 58 I.A. 282.
6. Such as under S. 60, Courts of Wards Act, a ward of court is not competent to create any charge on his property; so is the holder of property under Chota Nagpur Encumbered Estate Act.
7. *Ratnam* v. *Siva Subramanaya*, 16 Mad. 353.

Govind,[1] *karta*'s alienation of joint family property for providing a permanent shrine to a family idol was held valid.[2] In *Gangy Reddi* v. *Tammi Reddy*,[3] the Privy Council held valid a dedication of a small portion of family property for the purpose of carrying on a *choultry*. Thus, it seems to be settled that the *karta* can dedicate a small portion of the joint family property for a pious, religious or charitable purpose, beyond this he has no power.

The disability of a Hindu female holder of woman's estate is now academic. It will have relevance only in respect of the dedications made before June 17, 1956 (i.e., before the coming into force of the Hindu Succession Act). In *Sardar Singh* v. *Kunj Behari*,[4] the Privy Council observed :

> "The Hindu system recognizes two sets of religious acts. One is in connection with the actual obsequies of the deceased and the periodical performance of the obsequial rites prescribed in the Hindu religious law which are considered as essential for the salvation of soul of the deceased. The other relates to acts which though not essential or obligatory are still pious observance which conduce to the bliss of the deceased's soul."

Thus, the Hindu female's powers, in respect of the former, are wider than in respect of the latter; for the former she can alienate the entire joint family property, while for the latter she can alienate only a small portion of property. In the latter case, widow alienated 1/75 of the whole of the estate for the observance of *Bhog* to the deity Jagannath at Puri temple and for the maintenance of the priests of the temple. The gift was held valid being for the spiritual benefit of her husband.[5] In some cases, a contrary view has also been taken, the insistence being that gift to be valid must be for the spiritual benefit of the husband and not just for a charitable or pious purpose.[6]

The Supreme Court reviewed the case law and considered that matter elaborately in *Kamla Devi* v. *Bachulal*[7] and reiterated the view taken by the Privy Council in *Sardar Singh's case*.

II
Maths

In its ordinary parlance, *Math* means an abode or residence of ascetics. In its legal connotation, it is a monastic institution presided over by its head, known as *mahant*, a superior ascetic and established for the use and benefit of ascetics generally or of ascetics belonging to a particular order, ordinarily the disciples of the *mahant*.[8] The basic purpose of a *Math* is to encourage and foster

1. 8 All. 76.
2. *See* also *Sri Thakurji* v. *Nand*, 43 All. 560; *Ramalinga* v. *Sivachidambra*, 42 Mad. 440. A contrary view was taken in *Manthurswami* v. *Danaswami*, 11 M.L.T. 310. This was a case of dedication to a public idol.
3. 54 I.A. 136.
4. 49 I.A. 383.
5. *See* also *Tataya* v. *Garimilla*, 34 Mad. 288; *Khub Lal* v. *Ajodhya*, 43 Cal. 574.
6. *Ram Kamal* v. *Ram Kishore*, 22 Cal. 506; endowment in favour of a *pujari* held invalid; *Pura Devi* v. *Jai Narayan*, 4 All 582 (gift of a house to family priest was held invalid), followed in *Sham Devi* v. *Birabhadra*, 43 All. 463; *Thakur* v. *Mst. Dipa*, 10 Pat. 52; *Munshilal* v. *Shiv Devi*, 4 Lah. 336 and *Harmitra* v. *Raghubar*, 3 Luck. 645 took the same view.
7. 1957 S.C. 434; reaffirmed in *Sheo Kaur* v. *Nathuni*, 1976 S.C. 709.
8. *Swami Harbans Chariji* v. *State of M.P.*, 1981 M.P. 82.

spirtual learning and knowledge, by maintenance of a competent line of teachers who impart religious instruction to disciples and followers of the *Math* and to strengthen the doctrines of the sect or school to which *Math* subscribes. There can be *sudra* maths also.[1]

The presiding element in a *Math* is the *mahant* or the religious teacher. Even when a temple is attached with a *Math*, the presiding element in the *Math* remains the *mahant*. It is in the *debutter* that the presiding element is the idol.

A *Math* comes into existence when dedication of properties is made to *Math*. A *Math* may also come into existence as an offshoot of an already existing *Math*. In such a case, the second *Math* is subordinate to the parent *Math* and the latter exercises some control over the former. There are several types of *Maths* existing in our country. Each of them is governed by its own customs and usages. Broadly speaking, *Maths* are of three types : *Mourushi Math*, when the office of *mahant* is elective and *Hakimi Math* when the founder has reserved the power of nomination of *mahant*.

Property of a Math vests in the Math.—The *mahant* is the head of the *Math*, but the property dedicated to a *Math* does not vest in him. "The Hindu law like Roman law recognizes not only corporate bodies with right of property vested in the corporations apart from its individual members, but also juridical persons or subjects called foundation."[2] When property is dedicated for a particular purpose, the property itself gets impressed with that purpose, is raised to the status of a juristic person and can become, in law, the bearer of rights and duties.[3] Thus, the endowed property in the case of a *Math* vests in the *Math* itself as a juristic person and not in the *mahant*.[4] A *Math* is a juristic person and is capable of acquiring, holding and vindicating legal rights through the medium of some human agency which is ordinarily the agency of *mahant*.[5] However, the terms of a grant may provide differently, and may lay down that the property will vest in an individual or a committee or a body of trustees. In that case the property will vest accordingly.

Legal position of a Mahant.—The *mahant* is neither a trustee nor a corporation sole. He is just the manager of the *Math* with wider powers than those possessed by a manager, trustee or *dharmakarta* of a temple. He has dual capacity. He is the manager of properties, and the spiritual head of the *Math*. In *Ram Prakash* v. *Anand Das*,[6] the Privy Council observed : "The *mahant* is the head of the institution. He sits upon the *gaddi*, he initiates candidates into the mysteries of the cult; he superintends the worship of the idol and the accustomed spiritual rites; he manages the properties of the institution; he administers its affairs." In *Vidhyavaruthu* v. *Baluswami*,[7] the Privy Council said : "Called by whatever name, he is only a manager and custodian of the idol or institution. In almost every case he is given the right to a part of usufruct, the mode of enjoyment and the amount of the usufruct, depending again on usage

1. *Krishna Singh* v. *Mathura Ahir*, 1980 S.C. 707 is the latest decision on the subject.
2. *Monohar* v. *Lakhiram*, (1888) 12 Bom. 247; *See* also *D.A.V. College* v. *S.N.A.S.H.S. School*, 1972 P. & H. 245 (F.B.).
3. *See* also Mukherjea. *Hindu Law of Religious and Charitable Trust*, 265.
4. *Vidhyavaruthu* v. *Baluswami*, (1921) 48 I.A. 302.
5. *Babaji* v. *Laxmandas*, 28 Bom. 215; *Shri Krishna* v. *Mathura*, 1972 A.L.J. 155.
6. (1916) 43 I.A. 73.
7. (1921) 48 I.A. 302.

and custom. In no case is the property conveyed to or vested in him, nor is he a trustee in the English sense of the term, although in view of the obligations and duties resting on him, he is answerable as a trustee in the general sense for maladministration."[1] This position clearly emerges from his powers and functions.

Management of math and its properties.—Unless the founder has directed otherwise, the management and possession of properties of a *Math* belong to the *mahant*. In *Arunachalam* v. *Venkatachelapathi*,[2] the Privy Council observed : "There may be varieties of circumstances and tenure, and in respect of these, if the usage and custom are clear, they constitute the law of the *Math*." The *mahant* holds properties of the *Math* for certain specific purposes—purposes as laid down by the founder or by usage. In this regard the duties of the *mahant* are upkeep of the *Math* and the performance of the religious rites, ceremonies and festivals of the religious order to which the *Math* belongs. It is a part of the management that the *mahant* should support his disciples and other members of the *Math*, which constitute a sort of the household of the *Math*. He should also make arrangements for food, stay and like things for the visiting ascetics. In short, he should organize all the activities and perform all the functions for which *Math* has been created and which are connected or associated with the *Math*. For this purpose, *mahant*, though not a trustee, occupies a fiduciary position. All the expenses of the *Math* are to be met out of the income of the endowed property. In addition to the aforesaid expenditure, the *mahant* has to maintain himself in accordance with the dignity of his office and in accordance with the usages of the *Math*. It seems that a *mahant's* powers over the income of the endowed properties are fairly large; a *mahant* has ample discretion in the application of the funds of the *Math*, but, always subject to certain obligations and duties equally governed by usage and custom.

Right of representation.—The *mahant of* an *Akhara* or *Math* represents the *Akhara* or *Math* and has both the right to institute a suit on its behalf as also the duty to defend one brought against it. If the *Math* is not represented by a *mahant*, the decree passed against it is not binding.[3] It is obvious that it is the *mahant* who represents the *Math* in all its dealing with the outside world. This means that a *mahant* has power to do everything that may be necessary in the interest and for the benefit of the *Math*. A judgment against the *mahant* will bind his successors.[4] This is also true of a compromise decree. For a compromise, no sanction of the court is necessary.[5]

When the *mahant* himself is guilty of mismanagement or misappropriation, a suit can be filed by any person interested in the endowment. In *Thenappa* v. *Karruppan*,[6] the Supreme Court held that even in the case of a private trust, a suit can be filed for the removal of the trustee or for settlement of a scheme for the purpose of effectively carrying out of the object of the trust. If there is a breach of trust or mismanagement on the part of the trustee, a suit can be brought by any person interested in the *Math* and in the proper administration

1. *See* also *Krishna Singh* v. *Mathura Ahir*, 1980 S.C. 707.
2. (1919) 461 I.A. 204.
3. *Guranditta* v. *Amar Das*, 1965 S.C. 1966.
4. *Prosanna* v. *Gulab*, (1875) 2 I.A. 145 (a case of shebait); *Gora Chand* v. *Makhan*, 3 C.L.J. 404.
5. *Biram Prakash* v. *Narendra Das*, 1961 All. 266.
6. 1968 S.C. 915.

of the endowment. This was a suit filed for accounts against the trustee and for settlement of a scheme for the management and administration of the *Siva Ravanna Mana Pana Sona Guru Punja Matha* at Pillamangalam.

Mahant's power to borrow money.—The *mahant* has power to borrow money for purposes connected with the *Math*. It is a well established proposition of law that a *mahant* has power to bind the endowed property by his debts taken for justifying necessity. If the creditor has made bona fide and proper enquiries as to the existence of the necessity, he is protected and can obtain a decree which can be executed against the *Math* properties.[1] It is immaterial whether the debt was made a charge on the properties or not. If necessity is not established, the creditor may obtain a personal decree against the *mahant*, but the *Math* properties are not liable.

Mahant's power of alienation.—The *mahant's* powers of alienation of property are the same as that of the *shebait*. He can alienate properties for legal necessity or for benefit of the *Math* properties. We would discuss the *mahant's* power of alienation along with the *Shebait's* power of alienation in the next part of this Chapter.[2]

Mahant is liable to account.—The *mahant* has wider power over to the income of the endowed properties than the *shebait*. His powers are almost unfettered. He must discharge all obligations connected with the *Math* as laid down by the deed or by usage and custom. In the absence of a charge of lack of good faith, his discretion is unfettered. However, he can be charged with maladministration of the properties. He occupies a fiduciary position, and, therefore, he should keep proper accounts. The failure to keep accounts may be a ground for his removal. His liability to render accounts is not barred by limitation.[3]

Whether Mahantship is property.—There is no direct authority holding that mahantship is property though there is some for shebaitship. In view of this, a *fortiori* mahantship may also be considered as property. (*See* Part III of this Chapter, under the title, Legal Position of *Shebait*).

Succession to the Office of Mahant

The general rule of the devolution of property or the office of *mahant* is that it will devolve in accordance with the rules of devolution laid down by the founder of the endowment. Such rules will be given effect to, if they do not violate the provision of any law.[4] But it may happen that the founder has not laid down any rules. It may also happen that the *Math* is very old and nothing is known about its founder. In such a case, in respect of *shebaitship*, ordinary rules of devolution apply. But this is not so in the case of the office of *mahantship*. In the case of a *Math* it is custom, usage or practice of the *Math* concerned which determines how succession to the office is to take place.[5] As early as 1867, the Privy Council observed : "The only law as to these *mahants*

1. *Shankar* v. *Venkappa*, 9 Bom. 422; *Lakshmindra* v. *Raghvendra*, 43 Mad. 795.
2. *Thackersey* v. *Harbhum*, 8 Bom. 432; *Monohar* v. *Lakshmiram*, 12 Bom. 242.
3. *See* S. 10, Limitation Act, 1963.
4. *M. Manathunatha* v. *Sundaralingam*, 1971 Mad. 1 (F.B.), where most of the earlier authorities have been reviewed.
5. *Raja Muttu* v. *Perianayagum*, 1 I.A. 290; *Ramalingam* v. *Vythingam*, 20 I.A. 150; *H.H. Digya Darshan* v. *Devendra*, 1973 S.C. 168; *N.P.V.M. Hiremath* v. *V.S.M.K. Hiremath*, 1976 Kant. 103.

and their offices, functions and duties is to be found in custom and practice.[1] What is the usage and custom of a *Math* is to be proved by a person who asserts succession to the office on the basis of such custom and usage.[2]

The succession to the office of a *mahant* is determined in accordance with the rules laid down by the founder or by the usage and custom of each *Math*. Performance of any religious ceremony is not necessary, unless the usage of the *Math* requires it.[3] In a *Maurushi Math*, the *chela* of the last *mahant*, succeeds to the office. A *de facto chela* can also succeed to the *gaddi* and can be validly appointed as a successor.[4] In default of the *chela*, the office goes to the *gurubhai* of the last holder. Ordinarily, the eldest *chela* succeeds. But a junior *chela* may succeed if he is found more capable and if he was selected by the last *mahant* as his successor. Apart from this, even in a *Maurushi Math*, customs may differ. For instance, if there is no *chela* and no *gurubhai*, the line is deemed to be extinguished and succession goes to the representative of another line.[5] In those cases where the *mahant*[6] has a right to appoint his successor, he may also hand over the office to the latter during his life time.[7] However, the right to nomination of successor is a personal right and cannot be delegated.[8] Even when a *mahant* has a power of nomination, his nominee should not be a disqualified person; the appointment of a disqualified person is invalid.[9] In some cases it is required by custom that *mahant's* nominees should be confirmed or recognized by the members of the religious fraternity.[10] In a *Panchayati Math*, the succession to mahantship is by election. The mode of election is as laid down by the custom and usage of the *Math*. It is usually the *mahant* of the same sect in a particular locality who exercises this power. This is done usually on the 13th day after the death of the *mahant*.[11] In the *Hakimi Math*, the power of appointing the successor is vested in the family of the founder. Among the maths of *Vaishnavs, Bairagees* and *Saivaieti Gossain* of the Northern India, *mahants* are married persons. In such *Maths*, the mahantship goes to the personal heir of the *mahant*.

Personal properties of the Mahant.—The personal property of a *mahant*, where he is permitted to have personal property, does not devolve on his natural heirs, but on his spiritual heirs. When a *mahant* inherits personal properties, these are not the properties of the *Math* and properties purchased of these are also his personal properties.[12] In absence of any prohibition of law that a person belonging to a sect cannot acquire secular property, the property so acquired by a *mahant* will pass on to his *chela*, he being the spiritual heir and nature of the property will not get converted from secular to religious.[13]

1. *Greedharee Dass* v. *Nundo Kishore*, (1867) 11 M.I.A. 405.
2. *Vidyapurana* v. *Vidyamiddi*, 27 Mad. 436; *Bhagwant* v. *Girija*, (1972) 2 S.C.J. 780.
3. *Bhagat* v. *Prakash*, 1979 S.C. 814.
4. *Amar* v. *Prakash*, 1979 S.C. 845.
5. *Achatananda* v. *Jagannath*, 20 C.W.N. 122.
6. *Greedharee* v. *Nundo*, 11 M.I.A. 405; *Trimback* v. *Ganga*, 11 Bom. 514.
7. *Ibid.*
8. *Mahant Ramji* v. *Lacchmandas*, 7 C.W.N. 145.
9. *Ram Prakash* v. *Ananda*, 1943 I.A. 73.
10. *Satnam* v. *Bawa*, 1938 P.C. 216.
11. *Lahar* v. *Puran*, 42 I.A. 115.
12. *Nath Souna* v. *Kedar Nath*, 1981 S.C. 1878.
13. *Mahant Amar Dass* v. *S.G.P.C.*, 1992 P. & H. 28.

Mahantship is neither partible nor transferable.—The office of a *mahant* as well as properties of a *Math* are not subject to partition.[1] Similarly, a *mahant* has no power to transfer the office or the right of management. Even in those cases where one *Math* is subordinate to another, *mahant* of the subordinate *Math* cannot by deed or otherwise, transfer his rights to the *mahant* of the superior *Math*.[2] A *mahant* cannot also delegate his powers and functions.

Termination of Mahantship

Apart from the termination of mahantship on the death of the holder of the office, there are other ways also by which the mahantship may be terminated. The mahantship may be terminated :

(1) By relinquishment of the office by the *mahant* during his life time;

(2) By the supervening disability of *mahant* : The matter is not free from doubt. Incurring of a subsequent disability by a *mahant* does not amount to automatic forfeiture of office. His removal will be necessary.

(3) *By removal.*—A *mahant* may be removed from the office on account of his mental infirmity, bodily disease or on account of mismanagement or waste. He may also be removed, if he is leading an immoral life, or is acting contrary to the tenets or usage of the *Math*.[3]

III
Debutter (Temples and Idols)

An endowment for a temple or an idol does not come into existence by establishment of the deity or by consecration of the idol. The *debutter* comes into existence when some property is dedicated to it. It is a fundamental rule of Hindu law that whatever idol may be installed in a temple, or whatever deity or god a Hindu may worship, the idol represents the Supreme God and none else. This implies that dedication of property is not to the image that is installed in the temple, *but to the Supreme God*. In Hindu law, when dedication is made to an idol, the property vests in the idol itself as a juristic person.

Idol as a Juristic Person

In 1888, Mr. Justice West observed : "Hindu law recognizes not only corporate bodies with rights of property vested in the corporation apart from its individual members, but also juridical subject or persons called foundations."[4] In the leading case on the subject, *Nath* v. *Pradyumna Kumar*,[5] the Privy Council observed : "A Hindu idol is, according to long established authority, founded upon the religious custom of Hindus, and the recognition thereof by courts of law, a juristic entity. It has a juridical status with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who is in law its manager with all the power which would, in such circumstances, on analogy, be given to the manager of the estate of an infant

1. *Govind* v. *Ramcharan*, 52 Cal. 741; *Sethi* v. *Meruswaiar*, 45 I.A. 1; *Ram Charan* v. *Govinda*, 56 I.A. 104; (on appeal to the Privy Council).
2. *Govinda* v. *Ram Charan*, 63 Cal. 326.
3. *Tiruvambala* v. *Manikkavachaka*, 40 Mad. 177; the principles for the guidance of the court are enunciated.
4. *Manohar* v. *Lakshmi*, (1888) 12 Bom. 247.
5. *Prosonna* v. *Gulab*, (1875) 1 I.A. 145.

heir." The idol is, thus, considered a sacred entity and an ideal personality possessing proprietary rights. It is treated as legal entity. However, any idol cannot be a juristic person. Thus, idol of "Raja Ram" is not a juristic person.[1] A "religious book" cannot constitute a deity capable of holding property in the absence of consecration.[2] However, it is in the ideal sense that property can be said to belong to an idol. The possession and management of *debutter* properties in the nature of things is vested in some human agency like the manager, *shebait* or *dharmakarta*. Thus, two essential ideas are involved in the notion of debutter endowments :

(a) It is in ideal sense that the endowed property vests in the deity as juristic person, and

(b) the ideal personality of the idol is linked up with the natural personality of *dharmakarta, shebait* or manager.

The title of the endowed properties, vest in the idol and not in the *shebait* or manager. The *shebait* holds the properties to give effect to the purposes of the endowment, to carry out the wishes of the founder as to the worship of the deity, for looking after other matters associated with the deity, and for managing the endowed property. The idol is not a perpetual infant. It can always sue in its own name.[3]

An interesting question came before the Supreme Court in *Jogendra Nath v. I.T. Commr.*[4] Could the income of the deity be liable to income tax assessment? The Supreme Court answered the question in the affirmative. Delivering the judgment of the court, Ramaswami, J. said that it should be remembered that the juristic person in the idol is not the material image but the Supreme Being. It is also not correct that the Supreme Being, of which the idol is a symbol or image, is the recipient and owner of the dedicated property. The correct legal position is, the learned judge said, that the idol as representing and embodying the spiritual purpose of the donor is the juristic person recognized by law and in this juristic person dedicated property vests. A distinction should be made between the legal and spiritual aspect of the Hindu idol. Neither God nor any super natural being could be a person in law. But so far as the deity stands as the representative and symbol of the particular purpose indicated by the donor, it can figure as a legal person. It is in that capacity alone that dedicated property vests in it. The Hindu idol is a juristic entity capable of holding property and of being taxed through its *shebait* who are entrusted with the possession and management of its property. The decision lays down that since the accumulation and exploitation of wealth are the secular aspects of the *debutter* endowment, they are liable to taxation. It is submitted that the judgment blends nicely the old concept and the modern social need : idol worship is to be preserved but the income and wealth of such endowment cannot escape the incidence of taxation. Though idol is a juristic person and in the ideal sense, the property vests in it, it is not its beneficial owner. The true beneficiaries are the worshippers.[5]

1. *Ram Janki* v. *State of Bihar*, 1992 Pat. 135.
2. *Shayama* v. *Anam*, 1976 Ori. 176.
3. *Ashim* v. *Narendra*, 76 C.W.N. 1016.
4. 1969 S.C. 1089.
5. *Deoki* v. *Murlidhar*, 1957 S.C. 133.

Another illuminating judgment is that of Khare, J. in *Shanti Sarup* v. *R.S. Sabha.*[1] The followers of the *Radha Swami* faith recognize an impersonal deity and name it as "Radha Swami Dayal", the Supreme Being. The *Radha Swami Dayal*, being purely an impersonal deity, has no form or image. According to the tenets of this faith, the deity is represented on this earth by a human being who is called the *Santsad Guru*. The followers of this faith have been dedicating property to this impersonal deity, *Radha Swami Dayal*. The question is to whom are the gifts made? The *Radha Swami Dayal*, being an impersonal deity, cannot be a juristic person in the sense in which personal deities of Hindus are. But it is obvious that when a follower of this sect dedicates properties to *Radha Swami Dayal*, he divests himself of the ownership of the property. The followers of this faith have constituted a registered body by the name of *Radha Swami Satsanga Sabha* which carries on the entire management. His Lordship had no difficulty in saying that the property vests in the *Sabha*.

Public and Private Debutter.—It is competent for a Hindu to create a public or private *debutter*. In *Deoki* v. *Murlidhar*,[2] the Supreme Court observed : "The distinction between a private and a public trust is that whereas in the former, the beneficiaries are specific individuals, in the latter they constitute a body which is incapable of ascertainment." Apart from the restrictions laid down for ensuring good order and decency of worship, to regulate the time of public visits and to prevent overcrowding,[3] the right of worship in public temples is a free right.

The distinction between public and private endowment has assumed added importance as the State statutes regulate the public *debutter* and the private *debutters* are not within their purview. In *State of Bihar* v. *Mahant Shri Biseshwar*,[4] the Supreme Court held that, unless the *asthal* (math) itself is a public endowment, properties appurtaining thereto would not be properties of public endowment. Installation of an idol permanently on a pedestal and the fact that the temple is constructed on grounds separate from residential quarters of *mahant* are not conclusive proof that temple is a public temple.[5] That the public is freely allowed to enter the temple and has been worshipping there for a long period of time may be good evidence to indicate that the temple is a public temple, but it is not conclusive.[6] Similarly, feeding of *Sadhus* and giving hospitality to wayfarers is not by itself indicative of the public character of the temple. Merely because a temple has an appearance of a residential house does not in any manner militate against the contention that the temple is a public temple.[7] If a temple is proved to have originated as a public temple, nothing more is necessary to prove that the temple is public. But when a temple originates as a private temple or its origin is lost to antiquity, it has to be proved to be a public temple by cogent evidence. The courts have held that if a temple

1. 1969 All. 248.
2. *Saroop* v. *Sahi*, 1959 S.C. 951.
3. *Narhari* v. *Badrinath Temple*, 1953 S.C.R. 849.
4. 1971 S.C. 2057. *See* also *Profuila* v. *Satya*, 1979 S.C. 1682.
5. *Bihar Board of Religious Trust* v. *Ramashre*, 1977 Pat. 272 : the test for determining as to whether an endowment is privately laid down.
6. *Sarjoo* v. *Ayodhya*, 1979 All. 74; *Ayodha* v. *Ram*, 1983 All. 203.
7. *Goswami* v. *Shah*, 1970 S.C. 2025; in temples belonging to the Vallabha Sampradaya usually the ground floor is used as the place of worship and first floor as the residence of Goswami Maharaj. Some of the earlier cases have been reviewed.

has the following features, it may be taken as a public temple : (a) the temple building may be built in such an imposing manner that it may look like a public temple, (b) the members of the public are entitled to worship as a matter of right, (c) the expenses of the temple are met by the contribution made by the public, (d) *sevas* and *utsavas* conducted in the temple are those conducted in a public temple, or (e) the management as well as the devotees have been treating the temple as a public temple,[1] association of strangers in the management, the conduct of the founder and his descendants are some other facts which may help in determining the character of the temple.[2]

Real or nominal debutter.—The dedication of property should be real and not a colourable device to tie up the property for the benefit of the founder and his descendants. But if property dedicated to the deity is very large and there is a surplus after spending the income for the *seva-puja* of deity, the surplus will vest as secular property in the heirs of the founder.[3] The complete dedication and complete divestment of the founder are necessary. If the dedication is complete and the founder has completely divested himself from the dedicated properties, the *debutter* is real, otherwise it is partial. In determining whether a *debutter* is real or nominal, the manner in which properties are held and enjoyed is the most important.[4] The burden is very heavy on the person who alleges that a document solemnly executed is fictitious.[5]

Dedication may be partial or absolute. Whether a *debutter* is partial or absolute depends upon the intention of the settler. In ascertaining the intention regard must be had to the deed as a whole and the terms used therein.[6] After a review of most of the authorities, Krishna Iyer, J. in his expressive language laid down the test thus : where a dedication is made in a will and if on a consideration of the totality of terms, on shifting the more essential from the less essential purposes, on sounding the depth of the donor's wishes to find whether his family or his deity were the principal beneficiaries and on taking note of the language used, if the vesting is in the idol, an absolute dedication can be spelled out. So considered, if the grant is to the heirs with a charge on income for the performance of the *pujas*, the opposite inference is inevitable.[7] But the mere fact that the *shebait*,[8] or the manager is allowed to reside in the endowed premises or to take a small portion of income for his maintenance[9] or that the deed contains a direction for accumulation[10] will not render the endowment as partial.

The Shebaitship

The person in whom the management of the *debutter* is vested is known

1. *Ibid. See* also *Veierbasavardhya* v. *Devotees*, 1973 Mad. 280; *Gounder* v. *Rajan*, 1976 Mad. 102; *See* also *Radhakanta Dev* v. *Commr. of Hindu Religious Endowment*, 1981 S.C. 798.
2. *K.M. Senthivel* v. *Kulandaivel*, (1970) 2 M.L.J. 555.
3. *Jadu Gopal* v. *Pannalal*, 1978 S.C. 1329.
4. *Ram Ratan* v. *Kashinath*, 1966 Pat. 235; *Appala* v. *Venkata*, 1974 A.P. 316 tests laid down for determining whether debutter is real or nominal.
5. *Pares* v. *Mohani*, (1960) 1 S.C.R. 271.
6. *Dasrath* v. *Subba Rao*, 1957 S.C.R. 1122; *Sappani* v. *Mohideen*, 1974 S.C. 740; *Shri Ishwar* v. *Kanchan*. 1977 Cal. 473.
7. *C.I.T., West Bengal* v. *Jagannath Sew*, 1977 S.C. 1523.
8. *Shree* v. *Sushila*, 1954 S.C.R. 407.
9. *Dasratha* v. *Subba Rao*, 1957 S.C.R. 1122.
10. *Sarojini* v. *Jnanendra*, 24 C.L.J. 241.

by various names : the term *Shebait* is commonly used in Bengal; he is called the *dharmakarta* in Tamil Nadu and Andhra Pradesh; and *panchayatdar* in Tanjore and Malabar. In English, the term manager is used for him. But the term is a misnomer, as it fails to depict his real position and powers. It is only in a very broad sense that he is like a manager. As regards the endowed properties, he is more like a trustee, as regards his functions and duties towards the temple in spiritual sense, he is a holder of an office of dignity.[1] In *Kalanka Devi Sansthan* v. *M.R.T., Nagpur*,[2] the Supreme Court reiterated the well established proposition that the properties in the case of an idol or *sansthan*, do not vest in the *shebait* but in the idol. It is their possession and management which vest in the *shebait*. There is considerable difference between the position and functions of the *dharmakarta*, whose duties are secular, and *poojaries, archakas, mahants* and *shebait* of North India. The former is a mere manager, his liabilities are that of a trustee but he holds an office. The office may be held by a single member, or by a number of persons, or by a family or by number of families, or sometimes, by the entire village community.[3] *Dharmakarta's* service with reference to a temple and its properties are just a bundle of duties and obligations. In relation to the endowment, he is a holder of an honorary office with duties to discharge. The office may carry some prestige and the *dharmakarta* may receive honours. But such honours are not perquisites attached as such to the office; they are mere marks of respect commonly shown to religious dignitaries. By custom a *shebait* may be entitled to appropriate a part of the income of the *debutter*.[4]

Usually at the time of establishment of endowment, the founder appoints a *shebait* or himself becomes a *shebait*. Or, he may appoint a *shebait* later on. Sometimes, the founder appoints a *pujari or archaka* to conduct worship. He is just a servant of the *shebait* and none of the rights, powers of obligations of a *shebait* are transferred to him.[5] A *pujari* can be removed for misconduct or indiscipline, and has no right of alienation.[6] Even when the founder has appointed *purohits*, the mere fact that the appointees have performed worship for several generations does not confer any independent rights on the members of the family to be so appointed. But if the founder has laid down that right to perform *puja* shall remain in a particular family, he can do so. There may also be hereditary priests on the footing of custom or usage.

Legal position of shebait.—In the words of Mayne, "The *shebait* is one who serves and sustains the deity whose image is installed in the shrine. The duties and privileges of a *shebait* are primarily those of one who fills a sacred office. Shebaitship in its true conception therefore involves two ideas, the ministrant of the deity and its manager; it is not a bare office, but an office together with certain rights attached to it."[7] The legal position of the *shebait* is not that of a trustee of trust properties. The *shebait* is, of course, a manager, but shebaitship is not an office. The *shebait* has not only duties to discharge but he has also

1. *Ramanatha* v. *Murugappa*, (1909) 29 Mad. 283 (P.C.).
2. 1970 S.C. 439
3. *Manathuninatha* v. *Sunderlingam*, 1971 Mad. 1.
4. *Jagannath* v. *Byomkesh*, 1973 Cal. 397; *Ganesh* v. *Lal*, 1936 P.C. 318; *Sinha* v. *Rangaramanuja*, 1961 S.C. 1720.
5. *Satyanarayana* v. *Venkatapayya*, 1958 S.C. 195; *Veer* v. *Devotees*, 1973 Mys. 280.
6. *Veer* v. *Devotees*, 1973 Mys. 280.
7. *Hindu Law and Usage*, 928.

beneficial interest in *debutter* properties.[1] Shebaitship is heritable like any other property.[2]

It seems that shebaitship is not a mere office, it is property as well. In *Vidhayavarath* v. *Balusami*,[3] the Privy Council held that almost in all *debutter* endowments, *shebait* has a share in the usufruct of the *debutter* property. Even when no emoluments are attached to the office, he enjoys some sort of rights or interest in the endowment property, which may be called proprietary rights. A Full Bench of the Calcutta High Court in *Manohar* v. *Bhupendra*,[4] after a careful review of most of the authorities, held that shebaitship is property.[5] Mukherjea summed up the position thus :".....in the concept of shebaitship both the elements of office and property, of duties and personal interest, are mixed up and blended together. Undoubtedly the duties of a *shebait* are to be regarded as the primary thing whereas the emoluments or beneficial interest enjoyed by him are only appurtenant to the said duties. Neither of these elements however can be detached from the other..."[6] The shebaitship is immovable property.[7] It is a hereditary and heritable office. But the turn of worship is not property.[8]

On the other hand, after a very elaborate examination of authorities, Natesan, J., delivering the judgment of the Full Bench in *Manathunainath* v. *Sundaralingam*,[9] said that where no perquisites or emoluments are attached to the office of *dharmakarta*, it is not property, under Hindu law, the learned judge said, it may carry with it certain powers over property, but the powers can be and are exercised by the *dharmakarta* for and on behalf of the deity or institution.[10]

Even if shebaitship is considered property, the *shebait* has no right of sale of the office.[11] Similarly, the office cannot be mortgaged or leased out. A compromise which directs the sale or mortgage of the office is void,[12] the personal proprietary interest which the *shebait* has got is ancillary to and inseparable from his duties as ministrant of the deity and a manager of its temporal affairs. Mukherjea takes the view that only in three exceptional cases, the office may be alienated : (a) where the transfer is not for any pecuniary

1. *Angur Bala* v. *Devbrata*, 1951 S.C. 293, *see* also *Kailash* v. *Bhupal*, 1973 All. 238.
2. *Shambhu* v. *Shri Thakur*, 1985 Mad. 905.
3. (1921) 48 I.A. 302.
4. (1933) 60 Cal. 452, *see* also *Sovabat* v. *Kashinath*, 1972 Cal. 95.
5. *See* also *Ganesh Chand* v. *Lal Behary*, 63 I.A.. 448; *Pran* v. *Controller of Estate Duty*, 1968 Cal. 1996; the very fact that founder appointed himself a shebait will endow on him some beneficial interest in the dedicated properties and by functioning as a shebait, he would be enjoying some beneficial interest in the dedicated properties. *Jagannath* v. *Byomkesh*, 1973, Cal. 397.
6. Religious and Charitable Trust, 157.
7. *Ram Rattan* v. *Bajrang*, 1978 S.C. 1393.
8. *Padna* v. *Vishwanath*, 1976 Cal. 344.
9. 1971 Mad. 1.
10. *See* also *Shri Govind Lalji* v. *State of Raj.*, 1963 S.C. 1638, where in connection with the Nath Dwara temple, the Supreme Court said that the position of the Titkayat was that of custodian, manager and trustee, since he had at no time any right to any income of the property for his own use.
11. *Rajah Vurmah* v. *Ravi Burmah*, 4 I.A. 76; *Kali* v. *Panna*, 1974 S.C. 1932 (case law reviewed); *Nemai* v. *Bansidhar*, 1974 Cal. 333.
12. *Mandeo* v. *Yaduvansh*, 1969 All. 571; *See* also, *Abdul* v. *Mulla*, 1963 S.C. 309; *Savabati* v. *Kashinath*, 1972 Cal. 95 (for contrary view).

benefit, and the transferee is the next heir of the transferor or stands in the line of succession of *shebaits* and suffers from no disqualification, (b) when the transfer is made in the interest of the deity itself and to meet some pressing necessity, and (c) when a valid custom is proved, sanctioning alienation of a *shebait* right within a limited circle of purchasers, who are actual or potential *shebaits* of the deity or otherwise connected with the family.[1] In *Savabati* v. *Kashi Nath*,[2] Masud, J., after a review of the authorities, said that the shebaitship being an amalgam of office and property, or that it is not alienable under any circumstances, it can be transferred unless such a transfer is repugnant to the principles of Hindu law.

Presents made to Shebait.—Personal presents made to the *Shebait* are his personal property. In *Maharaja Parshottam Lalji* v. *Ajanta Estate Agency*,[3] the question before the Supreme Court was whether *charan seva* and *pradesh seva* were the personal property of the Guru or belonged to the endowment of Shree Goswami Maharaj. When Shri Goswami Maharaj leads collective and congregational prayers within the *haveli*, it is customary for the devotees to make offering at the feet of the Guru when they meet him. These are known as *charan seva*. Similarly, when the Goswamiji Maharaj goes outside the *haveli* to make similar prayers, the devotees touch the feet of Maharaj and make offerings. These are known as *pradesh seva*. Ranganath Misra, J. disagreed with the High Court that once Brahma Sambandha was established, the Guru as well as devotees of the cult lost their individuality and his (Guru's) very existence merges with the Lord. The learned judge observed that this was an over stretching of the doctrine. The Guru was not a conduit pipe between the devotee at one end and the Lord on the other so as to lead to the conclusion that whatever was offered at the feet of the Guru belonged to the Lord. These gifts thus belonged to the Guru personally.

Powers and Obligations of Shebait

The duties of a *shebait* are both spiritual and temporal. In respect of spiritual duties, he must perform *seva* and *puja* of the idol. The custody of the idol belongs to him. Ordinarily, a *shebait* cannot remove the deity. But in case removal of deity is necessary, the will of the deity should be given effect to; the will can be expressed through its *shebait*.[4]

Shebait is entitled to the possession and custody of the endowed properties. But he cannot assert an averse title against the idol, as it is through him that the idol acts. He is entitled to management of the *debutter*. If there are more than one *shebait*, all must act in unison.[5] If they are not able to act in unison, then one cannot file a suit of injunction against the other. In such a situation, the only remedy is to get a scheme laid down by the court which may fix the term of *shebaits*.[6] He is required to use reasonable care. Since a *shebait* is like a trustee, he cannot make profit out of the properties or use them for his own private and

1. *Religious and Charitable Trust, 181; In Nandlal* v. *Kesharlal*, 1975 Raj : 226 this passage has been quoted with approval.
2. 1972 Cal. 95.
3. 1986 S.C. 2094.
4. *Pramatha* v. *Pradyumna*, (1925) 52 I.A. 245.
5. *Laxman* v. *Shrideo*, 1973 M.P.L.J. 842.
6. *Nagarwali Devi* v. *Girijipati*, 1982 All. 80.

personal gains. He should keep proper accounts. The *shebait* is not entitled to any remunerations, unless provided by the founder in the endowment itself. Ordinarily, a *shebait* has no right to offerings made to an idol, but again the matter rests on custom or the intention of the founder. The general rule is; if the offerings are of permanent character, they belong to the temple, but if they are of perishable nature, such as food, they may be appropriated by the *shebait* or *pujari* or by other persons in accordance with custom.[1] It seems that by custom the *shebait* has the right of residence in the *debutter* property, unless there is an express prohibition in the deed of endowment. A *shebait* has right of management and he represents the deity in all temporal matters. He can bring suits on behalf of the idol or in his own right.[2] A decree in a suit against a *shebait* is enforceable against the *debutter* property. It also binds his successors.[3] It is only in certain circumstances that any other person, such as devotee or de facto manager, can bring a suit on behalf of the deity.[4]

Since the management and possession of the property vest in a *shebait*, he is bound to do whatever is necessary for the benefit or preservation of the *debutter* properties. If necessary, he can borrow money, file legal proceedings and take all those steps which may be necessary and proper. He may renovate an old temple.[5] Like the *mahant*, the *shebait* cannot delegate his functions, duties and powers. The gamut of the powers and functions of the *shebait* include the power of alienation of *debutter* property in some exceptional cases.

Alienation of endowed property.—The power of alienation is a power which the *shebait* can exercise only in exceptional circumstances. He may borrow money by simple loans or on some security he may, if necessary, sell some of the properties. Even if the deed of endowment expressly prohibits the *shebait* from alienating property, the *shebait* has the power to alienate and the alienation will not be held invalid.[6] This is also the position of the *mahant* in respect of the endowed properties. In respect of a *shebait's* or *mahant's* power of alienation, the rule laid down in *Hanuman Prasad case*[7] applies.[8] Thus, the burden of proof is on the alienee.[9]

The peculiarity of a *shebait's* and *mahant's* alienation like that of Hindu female holder of limited estate is that an alienation without legal necessity is binding on the alienor during his life time.[10] An alienation of a *shebait* or a *mahant* is merely voidable and void. However, the alienation of the entire endowment is void and the alienee will not get any title whatever.[11] Similarly, if the endowed properties are alienated as personal properties, the alienation is

1. *Manohar* v. *Lakshmiram*, 12 Bom. 247; *Gouri* v. *Ambika*, 1954 Pat. 196, where the position has been succinctly summed up.
2. *Maharaja Jogindra Nath* v. *Hemlata*, 52 I.A. 245; *Shri Ishwar* v. *Kanchanbala*, 1977 Cal. 473.
3. *Prosanna* v. *Gulab*, 2 I.A. 145.
4. *Kishore Joo* v. *Guman Behari Joo*, 1978 All. 1.
5. *Reghavachari* v. *Narayana*, 1973 Mad. 323.
6. *Ramchandraji* v. *Lalji Singh*, 1959 Pat. 305.
7. 1856 6 M.I.A. 393.
8. This was held by the Privy Council in a series of cases beginning with *Maharani Shibessouree* v. *Mathoora Nath*, (1863) 13 M.I.A. 270.
9. *G. Narayanan* v. *R.N. Rajagopalan*, 1987 Mad. 75.
10. *Mahant Ram Sarup* v. *Lakshmi*, 36 Pat. 1022.
11. *Granasamdanada* v. *Valu*, 27 I.A. 69; *Hemanta* v. *Shri Ishwar*, 50 C.W.N. 629.

void. The *shebait* or *mahant*'s powers of giving lease of the endowed property are very limited.[1]

Suit on behalf of the deity—A suit by worshipper as next friend of deity for a declaration that the alienation made by the *shebait* is null and void or to restrain him by a permanent injunction from alienating the debutter property is maintainable.[2] In *Viswakarma Mandir Trust* v. *Munni Devi*,[3] the question before the Patna High Court was : whether one co-trustee (out of several trustees) looking after the management of debutter properties could file a suit on behalf of the deity for the eviction of debutter properties? In this case, neither the other trustees were joined as co-trustee, nor were they made proforma defendants. There was also no evidence that the plaintiff was authorized to file the suit by other co-trustees. But it was an established fact that the trustee was in the actual management of the *debutter* property : it was he who let out the premises and it was he who has realized the rent on behalf of the deity. The suit was filed on behalf of the deity, on behalf of the trust of the Vishwakarma Mandir. After a review of the authorities, the court held that since the real plaintiff is a deity, who is a juristic person, a suit by the deity though one of its trustees is maintainable. It was a private endowment.

Suit to challenge alienation.—In *Mahajan Mahto* v. *Gopi Nath Jee*,[4] the question was whether a *pujari* can file a suit on behalf of the deity challenging an improper alienation made by the *shebait*? Agreeing with the well established proposition that in reality the possession and management of the *debutter* property vests in the *shebait*, and this carries with it the right to bring whatever suits are necessary for the protection of the property, and every right of suit is vested in the deity, the court said that when the *shebait* himself is the culprit (and thus will not bring the suit) the *pujari*, or for that matter any devotee, can also file a suit to protect the interest of deity and challenge an improper alienation made by a *shebait*. It was held that the suit by the *pujari* was maintainable. Similarly, in *Shri Thakurji Maharaj* v. *Dankiya*,[5] where a person claiming to be the de facto *shebait* filed a suit praying that a scheme for the management of the property of the deity be drawn up to ensure proper management of *debutter* property, the Allahabad High Court held that such a suit was maintainable. In this case the plaintiff was a prospective *shebait* under the endowment. In *Kapoor Chand* v. *Ganesh*,[6] the Supreme Court has reffirmed the view that a devotee could file a suit to challenge improper alienation.

Contract is specifically enforceable.—Where a *shebait* enters into a contract for sale of *debutter* property for legal necessity, the contract is specifically enforceable.[7]

There is a long line of cases on the subject as to what amounts to legal necessity or benefit of estate. Broadly speaking, a *shebait* has power to alienate property or to borrow money for carrying out the *seva puja* of the deity and for

1. *Shridar* v. *Jagannath*, 1976 S.C. 1860.
2. *Bhagwati* v. *Laxminath*, 1985 All. 228.
3. 1986 Pat. 158 case law reviewed.
4. 1986 Pat 3.
5. 1986 All. 247.
6. 1993 S.C. 1145.
7. *Shri Durga Thakurani Bije* v. *Chintamani Swain*, 1982 Ori. 156.

repairing the *debutter* property and other possession of the idol or for instituting or defending suits in respect of endowed properties.[1] Alienation cannot be made for the benefit of dependants.[2] The *shebait* has no power of granting permanent leases.[3] When an alienation is challenged, the burden of proof is on the alienee.[4] The rules in respect of alienation of endowed property are more or less the same as in respect of *karta's* power of alienation. Reference may be made to Chapter XII of this work. In this connection the observation of Mayne may be noted : "In the case of public religious and charitable endowments, it is submitted that the benefit to the estate and necessity should mean one and the same thing; to recognize 'benefit of the estate' as a ground for supporting an alienation of *debutter* property, apart from strict necessity, would be to enlarge the powers of the *shebait* or *dharmakarta* far too much, and slowly to undermine the very foundation of the institution".[5]

Period of limitation.—Under the Indian Limitation Act, 1963, as against a *shebait* or *mahant* and his legal representatives or his assigns, not being for valuable consideration, there is no period of limitation to file a suit for the recovery of property, or its proceeds or for accounts of such property. In the case of suit to set aside an alienation for value, the period of limitation is 12 years in respect of immovable property and three years in respect of movable property from the time when the alienation is known to the plaintiff.[6] A suit for the recovery of possession of the endowed property which has been alienated must be filed within 12 years from the death, removal or resignation of the transferor.[7] In case someone claims *shebaitship* by adverse possession, the rightful owner can bring the suit within 12 years.[8]

Who can challenge alienation.—A worshipper or any other person interested in the *debutter* can challenge it.[9]

Devolution of Shebaitship

Founder's rights.—Ordinarily, after the foundation of endowment, whether private or public, the shebaitship vests in the founder and his heirs. The founder can also appoint a *shebait* by his will.[10] In the following two cases, the founder's right to act or appoint a *shebait* is lost : (1) If he has disposed of, or (2) if, on account of some practice or usage, the mode of devolution is different.

The founder has power to appoint any person to manage the endowment on his behalf; such a person is under his supervision and control, and he can remove him at any time. But if the founder hands over all his rights to another and divests himself of all rights (virtually amounting to vesting of shebaitship in another person), the founder loses all powers and has no say in the matter.

1. See *Venbu* v. *Shrinivas*, 23 M.L.J. 638. *Palaniappa* v. *Devasikamony*, 44 I.A. 147; *Biram* v. *Narendra*, 1966 S.C. 1011.
2. *Mahadeo* v. *Meena*, 1976 All. 64.
3. *Palaniappa* v. *Devasikamony*, 44 I.A. 147; *Gadigeyya* v. *Sri Vishnu*, 1973 Mys.
4. *Jogindra* v. *Official Receiver*, 1975 Cal. 389, 207 (earlier case law reviewed).
5. *Hindu Law and Usage*, 931.
6. Articles 94 and 95, Indian Limitation Act, 1963.
7. Article 96, Limitation Act, 1963.
8. Article 107, Limitation Act, 1963.
9. *Puran Singh* v. *Ajaib Singh*, 1991 P. & H. 247; *Ram Chand* v. *Thakur Janaki*, 1970 S.C. 532.
10. *Shyam Sunder* v. *Moni Mohan*, 1967 S.C. 977.

In case the founder has framed a scheme of succession, but the scheme fails, the management reverts to the founder. Otherwise the founder has no right to interfere in the management or devolution of the office, unless he has reserved some power for himself under the scheme.[1] Once an endowment is made, the grantor has no power to derogate from the grant. If for some reason or other, the grantor or founder is not satisfied, such as when he feels that purpose of the endowment is not carried out, his remedy is to apply to the court and get a scheme framed. It should be noted that a person who makes contribution to an endowment subsequent to its foundation cannot claim to be the founder even if his contribution is substantial.[2]

Whether the founder can lay down a scheme which violates the rule laid down in *Tagore's case*[3] would be discussed a little later.

Devolution of the office of shebait.—As a general rule, the devolution of the office of a *shebait* is in accordance with the will or deed of the endowment. If in the deed the founder has not provided for any scheme of devolution of the office, the devolution will be in accordance with any custom or usage applicable to the endowment. If there is no such custom or usage, then ordinary rules of succession will apply, i.e., the office and management will devolve on the heirs of the founder.[4] But the founder cannot lay down a line of succession inconsistent with the general law.[5]

The question whether a female can succeed to the office has come for consideration in several cases. In *Angurbala* v. *Debobrata*,[6] the Supreme Court held females have a right of succession to the office, as shebaitship has both the elements of office and property.[7]

The question whether a female can succeed to a purely religious or priestly office has come before our courts in connection with the devolution of the office of *pujari* or *archakas*. In South India, there are hereditary priests called *archakas* to whom considerable grants are usually made by the founder. At times they are also the trustees of the temple.[8] Their office and property devolve by ordinary rules of succession. In Northern India, *pujaris* mostly hold office at the pleasure of the *shebait* and in most cases the office is not hereditary, but where it is, the same rules apply. In *Ram Kali* v. *Ram Ratan*,[9] the Supreme Court held that even though a female is personally disqualified from officiating as *pujari* in the temple, she can get the *seva-puja* performed by another person. Therefore, a usage which permits a female to succeed to a priestly office is valid and can be given effect to if it is not contrary to public policy.[10]

1. *Gauri Kumari* v. *Ramanimayi*, (1923) Cal. 30; *Radhika* v. *Amrita*, (1947) Cal. 307; *Cheandrachoor* v. *Bibhutibhushan*, (1994) 23 Pat. 763.
2. *Gossamee* v. *Raman*, (1889) 16 I.A. 137.
3. (1852) I.A. Supp. 47.
4. There is a long line of cases on these propositions. We may note some, *Gosamee* v. *Raman*, (1989) I.A. 137; *Sheo Prasad* v. *Aya Ram*, (1918) I.A. 1; *Pappa* v. *Shanmugha*, 1991 Mad. 90.
5. *Profulla* v. *Satya*, 1979 S.C. 1682; *Sitesh Kishore* v. *Ramesh Kishore*, 1982 Pat. 339.
6. 1951 S.C. 293.
7. See also *Kalipada* v. *Palani*, 10 I.A. 32; *V.R. Santhanam* v. *V.S. Sunder Thammal*, (1981) 2 M.L.J. 8.
8. M.L.J. 660.
9. 1956 S.C. 493.
10. See also *Annya Tantri* v. *Ammaka*, 41 Mad. 886 (F.B.) per Wallis, C.J.

It may happen that the office of the *shebait* may by inheritance vest in more then one person. In such a case it is open to the parties to arrange among themselves for the *seva-puja* and management of properties. They may agree to discharge their duties and functions by turn or they may agree to some other arrangement.[1] In case parties fail to agree and it may be that the right to worship includes right to offerings, they may sue for partition but, as has been seen earlier, (Chapter XIV, under the title, Temples and Idols), partition in such a case cannot mean partition of the endowed properties, but of the right of worship and right to offerings. In such a case, the court may fix the term during which each of them will be entitled to do *seva puja* and take the offering.[2] But if the right to worship does not include a right to offerings, no partition can be made. They must manage jointly. If parties are members of the Mitakshara joint family, the *karta* has the right of *seva-puja* and management and other members cannot ask for the exercise of the right by rotation.[3] In case of disputes or mismanagement, anyone interested in the worship may sue and get a scheme settled by the court.[4]

This seems, now, to be established that where a *shebait* has a right to nominate his successor, he may do so by an act inter vivos or by will;[5] in case he fails to exercise the power, the office reverts to the founder.

Devolution of office contrary to the rule in Tagore's case.—*Tagore* v. *Tagore*[6] lays down the rule that all estates of inheritance created by gift or will, so far as they are inconsistent with the general law of inheritance are void. It has been seen that the founder of the endowment has a right to dispose of the *dharmakarta*ship or *shebait*ship in any manner. If there is no such disposition, and in the absence of any usage or custom to the contrary, the office, like any other species of heritable property follows the line of inheritance from the founder. A Full Bench of the Calcutta High Court observed that the *shebaitship* being property, the rule laid down in *Tagore's case* applies.[7] After an elaborate review of the authorities, Mukherji, J. held : "The founder of a Hindu *debutter* is competent to lay down rules to govern the succession to the office of a *shebait*, subject to the restriction that he cannot create any estate unknown or repugnant to Hindu law.[8]

In an equally elaborate judgment a Full Bench of the Madras High Court held that, *dharmakarta*ship is not property, the rule in *Tagore's case* does not apply.[9] The founder has a right to lay down any scheme of succession for the office of *dharmakarta*.[10]

Disqualifications.—It seems that all the disqualifications under Hindu law which prevent an heir to succeed to the property will apply in the case of

1. *Meenakshi* v. *Somensundaram*, 1921 Mad. 388.
2. *Pramatha* v. *Pradyumna*, (1925) 51 I.A. 245.
3. *Thandavaraya* v. *Shummugan*, (1909) 32 Mad. 167.
4. *Bimal* v. *Janandra*, (1973) Cal. 338.
5. *Bankers* v. *Kashi*, 1963 Cal. 85.
6. (1872) I.A. Supp. 47.
7. *Manohar* v. *Bhupendra*, 1932 Cal. 791.
8. *But in Ashim* v. *Narendra*, 76 C.W.N. 181, the court said Tagore's case is not applicable without exception; *see* also *Bhat Nath* v. *Kalipada*, 1982 Cal. 534.
9. *Manathunainatha* v. *Sundaralingam*, 1971 Mad. 1 (F.B.).
10. The Madras High Court took this view earlier also : *Manathunainatha* v. *Gopala*, 1944 Mad. 1. The Full Bench relied on this decision and certain observations of the Supreme Court in *Sambandamurthi* v. *State of Madras*, (1970) 2 S.C.J. 131.

devolution to shebaitship. Under the Hindu Succession Act, 1956, change of religion does not disqualify a person from inheriting property, though his descendants are disqualified. It is submitted that the same rule will apply to the office of shebaitship. As to the performance of secular duties, there are no difficulties. As to spiritual duties, someone else can perform them on behalf of the *shebait*. However, the intention of the founder has to be looked into and if he clearly indicated that a non-Hindu cannot be a *shebait*, his intention will be given effect to. Similarly, if usage does not allow that the office can be held by a non-Hindu, the office cannot devolve on a non-Hindu. It is submitted that Hindu law of religious endowments is not a secular law. In fact, this is the only aspect of modern Hindu law where religion is still an important consideration.

Termination of Office

The office of *shebait* falls vacant on the death of a *shebait*. The office may also fall vacant by resignation or relinquishment. When a *shebait* resigns or relinquishes his office, the office will go to the person next in order. It seems that supervening disability of the *shebait* will not divest him of the office, unless there is custom or usage to that effect.

The office also falls vacant on the removal of a *shebait*. If a *shebait* is guilty of misconduct or abuse of his position, he can be removed by the court. The court possesses this power over both private and public endowments. The court also has the power to frame a scheme for the management of the endowed properties. However, a *shebait* cannot be removed merely for some mistakes on his part or on account of laxity of management.[1] He may be removed for treating endowed properties as his own,[2] or for immorality or gross moral turpitude.[3]

Right to share in offering.—Apart from the *shebait* who has a right to a share in the offering made to the deity, under Hindu law, there are some other persons who have a right to take a share in the offerings by virtue of some custom. These fall in two categories : (a) those who perform *seva puja* in the temple, i.e., perform essentially religious or spiritual functions, and (b) those who perform some secular functions. The former we have already discussed. The instances of the latter are several. One such instance came before the Supreme Court in *Badri Nath* v. *Panna*.[4] Certain families of Thakurs were entitled to take a share in the offerings made in or around the temple of Shri Vaishno Devi Ji in lieu of certain secular services rendered by them. These included food to Sadhus who visited the temple, maintenance of cleanliness of the *gupha* of Shri Vaishno Devi Ji, medical service to pilgrims, etc. These *thakurs* were known as *baridars*. The *baridar* held no office. They performed certain secular duties and were entitled to a share in offering. The right to share in the offering was held to be property. It was heritable, and the provisions of the Hindu Succession Act, 1956, applied. In *Shri Vallabharaya Swami Varu* v. *Devi Hanuman Charyulu*,[5] certain *inam* land was given to the *archakas* in lieu of services that they were required to render to the temple. It was held the property in *inam* deed belonged to *archakas* and not

1. *Gulzari Lal* v. *The Collector*, 39 C.W.N. 699 (P.C.).
2. *Chintamani* v. *Dhando*, 15 Bom. 612.
3. *Nirmal* v. *Jyoti*, (1941) 2 Cal. 128.
4. 1979 S.C. 1314.
5. 1979 S.C. 1147.

to the temple and would remain with them so long as they rendered services.

Suit against debutter.—No person can file a suit against the *shebait* as a next friend of the deity unless he has been so appointed by the court.[1] But where a suit is filed on behalf of the deity, the mention of the name of the temple as plaintiff is a mere misdescription and the real plaintiff is the idol.[2]

Claiming of *de facto* shebaitship of temple—Public including defendants would have free access to temple.—Where plaintiff claimed that deity in question was gifted to their forefathers by the then King, hence, it was their private deity and they were the *shebaits*. It was shown by ancient documents produced by the plaintiff that there was appointment of forefather as Deshmukhya. Persons from the locality testified that since long the plaintiff were performing the *puja* and offering other services to the deity and were receiving the offerings made to the Goddess by the devotees. Defendants were unable to show that the job of shebaitship was performed by any other individual. As such, the plaintiff due to long possession and service rendered was entitled to be declared as de facto shebaits. But as all movable properties and construction in temple had been made out of public donation, hence, public including defendants would have free access to such temple.[3]

IV
Charitable Endowments

In this Part, under charitable endowments, are included all the endowments recognized under Hindu law except the *math* and *debutter*. A Hindu can make a gift for the *istha* and the *purta*. The usual charitable gift or bequest for charitable purposes are : the institution of the *dharmashala*, *annastrams* (choultries), *sadavarts*, for the establishment or maintenance of educational and medical institution, for construction and maintainance of source of supply of water, such as tanks and wells, bathing ghats, etc. A Hindu can create a charitable trust for any of these purposes. He may also dedicate property for any of these purposes and create an endowment. Such dedications are made by the usual ceremonies of *sankalpa* and *utsarga*, though, as has been seen (Part II of this Chapter), no particular ceremonies are obligatory. It will be very interesting to know in whom does the property vest when dedication is made for a tank, well, grove or *dharmashala*.[4] When dedication to tanks and trees is made, private ownership ceases. But the question of the property vesting in a corporate body or any institution does not arise. Nor does the question of administration of such properties arise.[5]

We may discuss dedications to some of these objects.

Tanks and wells.—The excavation of tanks and wells has been a charitable purpose recognized in Hindu law from the very beginning. It is at the forefront of the *purta* works. In the *Vishnu Dharmashala*, a passage runs : "as there is no sustaining of life in both worlds without water, the wise man should always construct reservoir of water. A well is equal to *Agnistoma* sacrifice, in a desert it

1. *Jagdish* v. *Ishwar*, 1981 Cal. 259.
2. *Vidhyasagar* v. *Anand Swarup*, 1981 All. 106; *Shivanand* v. *Shri Shankarji Maharaja*, 1984 All. 55.
3. *Kacha Kanti Seva Samiti* v. *Kacha Kanti Devi*, AIR 2004 SC 608.
4. *See* for details, Mukherjea : *Hindu Religious and Charitable Trusts*, 28-34.
5. *Ibid.*, at 34.

equals the *Aswamedha*. The well flowing with drinking water destroys all sins. The well-maker, attaining heaven, enjoys all pleasure."[1]

Elaborate ceremonies are provided for the dedication of tanks and wells. In Hindu law, grant of land for the construction of a water reservoir is also valid. In *Kamaraju* v. *Sub-Collector, Urgole*,[2] certain lands as Inams were granted for the repairs and maintenance of a tank. The question was : What was the effect on this Inam of the Andhra Inams (Abolition and Conversion into Ryotwari) Act, 1956 ? The Supreme Court held that grant of land for the maintenance of a tank is a charitable purpose and for the purpose of the Act the tank is an institution. With the abolition of Inam, the property of tank gets converted into Ryotwari land to be managed by its manager, though it will be registered in the name of the tank. The court left open the question whether tank is a juristic person.

Groves and trees.—The consecration of trees and groves is also a recognized charitable purpose from the earliest times. According to the *Mahabharata*, "The trees honour the Gods with flowers, the manes with fruits, the guests with shade. The planter of trees procures the salvation of his deceased ancestors as well as those of succeeding future generations."

The same is true of groves. Such dedications are valid. In *Chandra* v. *Jnanendra*,[3] the Calcutta High Court held valid a dedication of a piece of land upon which group of five trees, known as *Panchabati*, was planted. Elaborate ceremonies for the consecration of trees and groves are provided.

Dharmashalas or rest houses.—Construction of *dharmashalas*, too, has been a popular object of a charitable endowment, too, has been a popular object of a charitable endowment from very early times. A *dharmashala* is a rest house. In South India, it is known as *choultry*. In the *choultries*, sometimes food is also provided for the travellers. In the ancient times, they were known as *pratishtaya griha*. In the *Bahni Purana*, we find the following passage : "Having caused to be made an auspicious and spacious asylum from burnt brick... should dedicate it for the benefit of the poor and helpless and travellers."

The property dedicated to the *dharmashala* vests in the *dharmashala* itself. The management of the *dharmashala* may vest in the founder or may vest in other person or a committee. Our country abounds in *dharmashalas*. Cities, towns and even villages have *dharmashalas*. The benefit of a *dharmashala* may be available to the public in general or it may be restricted to members of a community or to followers of a particular religion. Even in the latter case it will not distract from the charitable nature of the dedication. Once the dedication is made absolutely, it is not revocable.. The provisions of the Indian Trust Act or the Transfer of Property Act do not apply to dedication of property to Hindu endowments.[4]

Hospitals, educational institutions and gosalas.—Gifts for education have always been placed on a high pedestal. It is known as *atidan*, supreme gift. Imparting of free education has been the cherished object of Hindus throughout the ages. The same is true of hospitals and dispensaries known as *arogashalas*. In

1. Quoted by Mukherjea, at 57.
2. 1971 S.C. 563.
3. 29 C.W.N. 1033.
4. *Shri Ram Krishan Mission* v. *Dogar Singh*, 1984 All. 72.

the *Nandi Purana*, we have the following passage : "One must establish a hospital furnished with valuable medicines and necessary utensils placed under an experienced physician and having servants and rooms for the shelter of patients." Hindus hold the view that a person who consecrates a hospital is the giver of everything.

Bequest for hospitals and schools can be validly made.[1] In the *University of Bombay* v. *The Municipal Commissioner*,[2] the question before the court was whether a University which did not impart any instructions but merely granted degrees to those who attained a certain standard was a valid endowment? The Bombay High Court held that it was. In *D.A.V. College* v. *S.N.A.S.H.S. School*,[3] a Full Bench of the Punjab and Haryana High Court held that an educational institution or school, the object of whch is charitable or religious under Hindu law, will be regarded as juristic person capable of holding property. A hostel attached to an educational institution is a valid charitable purpose.[4]

The establishment and maintenance of *goshalas* is a valid charitable purpose.[5]

Sradha and sadabrats.—The *sradha* or oblations to departed ancestor is considered to be one of the obligatory duties of every Hindu. A Hindu often by an act inter vivos or by a bequest creates an endowment for the purpose of the performance of his *sradha* after his death or for the performance of the *sradha* of his ancestors. Such endowments have been held valid since very early times. In *Dwarka Nath* v. *Bysack*,[6] a testator provided *inter alia*, "I do direct my trustee to spend suitable sums for annual *sradha* or anniversaries of my father, mother, and grandfather as well as of myself after my demise, for the performance of the ceremonies and the feeding of the *Brahmins* and the poor..." The bequest was held valid.[7]

Sadabrat is the free distribution of food and alms to the needy and poor. *Langars* and *annasatras* are species of *sadabrat*. An endowment for the *sadabrat* has been all along held valid.[8] In *A.G.* v. *Strangman*,[9] an *annachatra* was held valid. According to the court, "An *annachatra* is an institution for distribution of food to Brahmins and mendicants, and varies from *sadabrat* in a particular case which is immaterial. A gift to *sadabrat* has been held good".

Reading of sacred books and gift to Brahmans.—Endowments for reading of sacred books and for gifts to *Brahmans* have been also very popular among Hindus. In *Dwarka* v. *Burodad*,[10] a testator gave the following direction : "I do direct my trustee to...spend suitable sums for the annual contributions and gifts to the *Brahmans*, *Pandits* holding tools for learning in the country at the time of Durga Puja; to spend suitable sums for the perusal of the *Mahabharat* and the

1. *Haridas* v. *Secretary of State*, 5 Cal. 228 and 7 Cal. 304 (P.C.) (bequest was for a school and dispensary); *A.G.* v. *Belchambers*, 36 Cal. 261, (bequest was for dispensary).
2. 16 Bom. 217.
3. 1972 P. & H. 245 (F.B.) (case law has been reviewed).
4. *Monie* v. *Scott*, 43 Bom. 281.
5. *Lalita* v. *Brahmanand*, 1953 All. 449.
6. (1875) 4 Cal. 443.
7. *See* also, *Lakshmi* v. *Baijnath*, (1872) 6 Bom. 24.
8. The earliest reported case is *Imnabai* v. *Khimji*, (1890) 14 Bom. 1.
9. 6 Bom. L.R. 56.
10. (1875) 4 Cal. 443.

Puranas and for the prayer of God during the month of *Kartick*." The bequest was held valid. In *Kedar* v. *Atal*,[1] Fletcher J. observed : "The testator was a Hindu and his will must be construed with reference to Hindu law. There can be no doubt that the feeding and paying of the Brahmans would be in accordance with Hindu ideas of meritorious act."

In the end, we may note the observation of Mukherjea that no exhaustive enumeration of charitable purpose under Hindu law is possible, and the expression *Istha* and *Purta* are themselves elastic and do not admit of a rigid definition.[2]

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1. (1908) 12 C.W.N. 1083.
2. Hindu Law of Religious and Charitable Trusts, 61.

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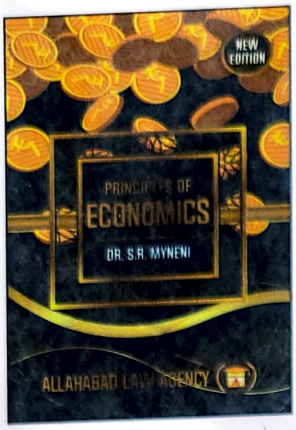

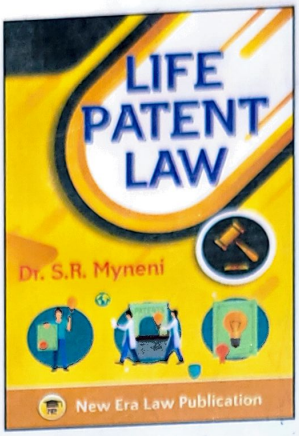

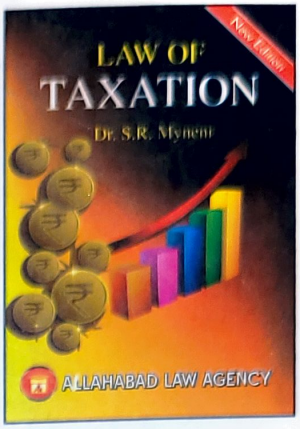

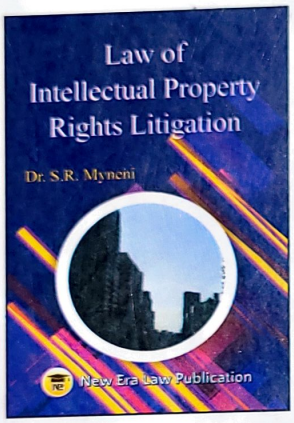

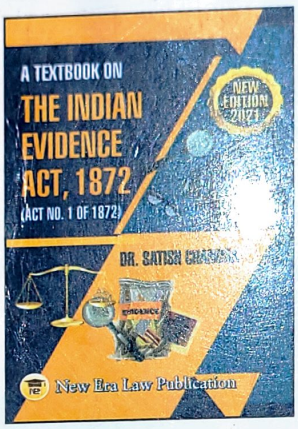

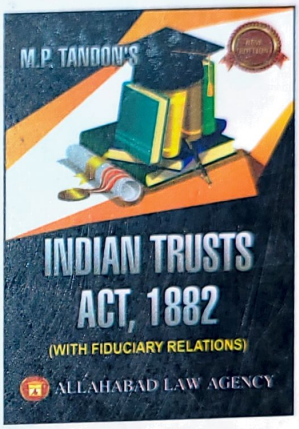

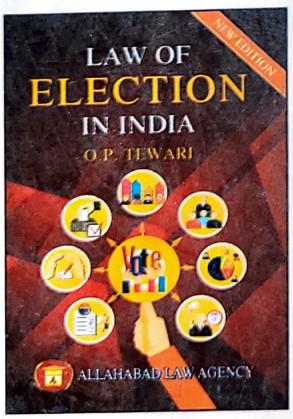

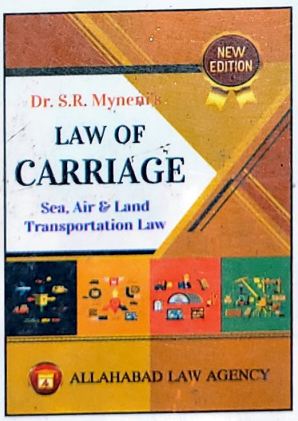

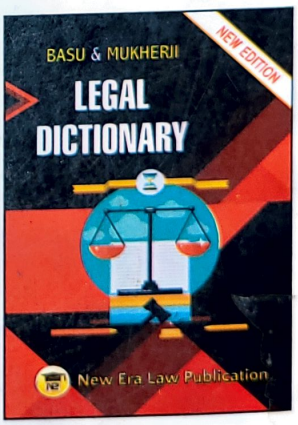

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